IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Crl.MC.No. 2354 of 2004()

CC.403/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
CC 232/2004 OF J.F.C.M CHAVAKKAD

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PETITIONER:

ABDULKHADER, S/O.ABDULKARIM,
PULICHARAM VEETTIL, VENMENAD DESOM,
PARAVATTY VILLAGE.

BY ADV. SRI.P.K.ANIL

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
PARAVATTY.

2. STATE REP. BY PUBLIC PROSECUTOR,
HIHG COURT OF KERALA,
ERNAKULAM.

Addl.R3.UMMUSELMA D/O.MUHAMMED
UNNI MUSALIAR AKALAD.
[ADDL.R3 IS IMPLEADED VIDE ORDER DT.03/10/2005 ON
CRL.M.A.NO.12055/2004]

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ
SRI.P.K.MOHAMMED PUZHAKKARA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2354 of 2004

Dated this the 13th day of July 2007

O R D E R

The petitioner is the first accused in a prosecution inter alia under Section 498A I.P.C. Cognizance has been taken on the basis of the final report submitted by the police. The de facto complainant, in that case is the wife of the petitioner. The wife had allegedly been divorced even prior to the filing of the complaint.

2. Cognizance was taken. The petitioner was not available for trial. Accused 2 to 5 faced trial. They were found not guilty and acquitted. The petitioner has now come before this court with the prayer that powers under Section 482 Cr.P.C may be invoked and the proceedings against the petitioner may be quashed in the light of the judgment acquitting the co-accused.

3. The position of law has now been settled and laid down beyond any trace of confusion or doubt by the Full Bench decision in Moosa vs. Sub Inspector of Police [2006(1) KLT 552]. It is now evident that an absconding co-accused cannot claim any benefit or advantage from the mere fact that the co-accused, who faced trial have been found not guilty and acquitted. I have gone through the judgment of acquittal of accused 2 to 5. The decision in that case is only to the effect that accused 2 to 5 are entitled to acquittal as there

is no evidence against them. No finding has been entered in that case, the advantage of which can be taken by the petitioner herein. I am, in these circumstances, satisfied that the prayer for invocation of powers under Section 482 Cr.P.C to quash the proceedings against the petitioner is without any basis.

4. The learned counsel for the petitioner submits that a warrant of arrest is pending against the petitioner. He prays that appropriate directions may be issued in the matter.

5. There shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 23/7/2007. In the meantime, the petitioner must appear before the learned Magistrate and apply for regular bail. The learned Magistrate must consider such application for regular bail on merits, in accordance with law and expeditiously - on the date of surrender itself, if such application is filed after giving sufficient prior notice to the Prosecutor in charge of the case.

6. This petition is dismissed with the above directions/observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007